

Health and Human Services

315.404-2

(1) Where no property is to be provided, a statement to that effect.

(2) Where property is to be provided, a full description, the estimated dollar value, the basis of price comparison with competitors, and the basis of rental charge, if rental is involved.

(3) Where the furnishing of any property or the extent has not been determined and is left open for future resolution, a detailed explanation.

(m) *Negotiations*. Include a statement as to the date and place negotiations were conducted, and identify members of both the Government and contractor negotiating teams by area of responsibility. Include negotiation details relative to the statement of work, terms and conditions, and special provisions. The results of cost or price negotiations must include the information required by FAR 31.109 and 15.406-3. In addition, if cost or pricing data was required to be submitted, the negotiation record must also contain the extent to which the contracting officer relied upon the factual cost or pricing data submitted and used in negotiating the cost or price.

(n) *Other considerations*. Include coverage of areas such as:

(1) Financial data with respect to a contractor's capacity and stability.

(2) Determination of contractor responsibility.

(3) Details as to why the method of payment, such as progress payment, advance payment, etc., is necessary. Also cite any required D & F's.

(4) Information with respect to obtaining of a certificate of current cost or pricing data.

(5) Other required special approvals.

(6) If the contract represents an extension of previous work, the status of funds and performance under the prior contract(s) should be reflected. Also, a determination should be made that the Government has obtained enough actual or potential value from the work previously performed to warrant continuation with the same contractor. (Project officer should furnish the necessary information.)

(7) If the contract was awarded by full and open competition, state where the unsuccessful offerors' proposals are filed.

(8) State that equal opportunity provisions of the proposed contract have been explained to the contractor, and it is aware of its responsibilities. Also state whether or not a clearance is required.

(9) If the contract is for services, a statement must be made, in accordance with FAR 37.103, that the services to be acquired are nonpersonal in nature.

(o) *Terms and conditions*. Identify the general and special clauses and conditions that are contained in the contract, such as option arrangements, incremental funding, anticipatory costs, deviations from standard clauses, etc. The basis and rationale for inclusion of any special terms and conditions must be stated and, where applicable, the document which granted approval for its use identified.

(p) *Recommendation*. A brief statement setting forth the recommendations for award.

(q) *Signature*. The memorandum must be signed by the contract negotiator who prepared the memorandum.

Subpart 315.4—Contract Pricing

315.404 Proposal analysis.

315.404-2 Information to support proposal analysis.

(a)(2) When some or all information sufficient to determine the reasonableness of the proposed cost or price is already available or can be obtained by phone from the cognizant audit agency, contracting officers may request less-than-complete field pricing support (specifying in the request the information needed) or may waive in writing the requirement for audit and field pricing support by documenting the file to indicate what information is to be used instead of the audit report and the field pricing report.

(3) When initiating audit and field pricing support, the contracting officer shall do so by sending a request to the cognizant administrative contracting officer (ACO), with an information copy to the cognizant audit office. When field pricing support is not available, the contracting officer shall initiate an audit by sending, in accordance with agency procedures, two (2) copies of the request to the OIG Office

of Audits' Regional Audit Director. In both cases, the contracting officer shall, in the request:

- (i) Prescribe the extent of the support needed;
- (ii) State the specific areas for which input is required;
- (iii) Include the information necessary to perform the review (such as the offeror's proposal and the applicable portions of the solicitation, particularly those describing requirements and delivery schedules);
- (iv) Provide the complete address of the location of the offeror's financial records that support the proposal;
- (v) Identify the office having audit responsibility if other than the HHS Regional Audit Office; and
- (vi) Specify a due date for receipt of a verbal report to be followed by a written audit report. (If the time available is not adequate to permit satisfactory coverage of the proposal, the auditor shall so advise the contracting officer and indicate the additional time needed.) One copy of the audit request letter that was submitted to the Regional Audit Director and a complete copy of the contract price proposal shall be submitted to OIG/OA/DAC. Whenever, an audit review has been conducted by the Office of Audits, two (2) copies of the memorandum of negotiation shall be forwarded to OIG/OA/DAC by the contracting officer.

315.404-4 Profit.

(b) *Policy.* (1) The structured approach for determining profit or fee (hereafter referred to as profit) provides contracting officers with a technique that will ensure consideration of the relative value of the appropriate profit factors described in paragraph (d) of this section in the establishment of a profit objective for the conduct of negotiations. The contracting officer's analysis of these profit factors is based on information available to him/her prior to negotiations. The information is furnished in proposals, audit data, assessment reports, preaward surveys and the like. The structured approach also provides a basis for documentation of this objective, including an explanation of any significant departure from this objective in reaching an agreement. The extent of documenta-

tion should be directly related to the dollar value and complexity of the proposed acquisition. Additionally, the negotiation process does not require agreement on either estimated cost elements or profit elements. The profit objective is a part of an overall negotiation objective which, as a going-in objective, bears a distinct relationship to the cost objective and any proposed sharing arrangement. Since profit is merely one of several interrelated variables, the Government negotiator generally should not complete the profit negotiation without simultaneously agreeing on the other variables. Specific agreement on the exact weights or values of the individual profit factors is not required and should not be attempted.

(ii) The profit-analysis factors set forth at FAR 15.404-4(d) shall be used for establishing profit objectives under the following listed circumstances. Generally, it is expected that this method will be supported in a manner similar to that used in the structured approach (profit factor breakdown and documentation of the profit objective); however, factors within FAR 15.404-4(d) considered inapplicable to the acquisition will be excluded from the profit objective.

- (A) Contracts not expected to exceed \$100,000;
- (B) Architect-engineer contracts;
- (C) Management contracts for operations and/or maintenance of Government facilities;
- (D) Construction contracts;
- (E) Contracts primarily requiring delivery of material supplies by subcontractors;
- (F) Termination settlements; and
- (G) Cost-plus-award-fee contracts

(However, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement). Other exceptions may be made in the negotiation of contracts having unusual pricing situations, but shall be justified in writing by the contracting officer in situations where the structured approach is determined to be unsuitable.

(c) *Contracting officer responsibilities.* A profit objective is that part of the estimated contract price objective or